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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	MM Docket No. 93-224
)	
Amendment of Section 73.202(b))	RM-8291, RM-8325,
Table of Allotments,)	RM-8358, RM-8360
FM Broadcast Stations,)	
)	
FARMINGTON, BISMARCK,)	
IRONTON AND CENTERVILLE, MISSOURI)	
AND HERRIN, ILLINOIS)	
)	

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

Respectfully submitted,

KREI INC.

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James K. Edmundson
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DATED: November 8, 1993

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE PROPOSALS	3
	Centerville	3
	Herrin and Ironton	3
	Bismarck	4
III.	SECTION 307(b) CONSIDERATIONS	4
IV.	CONCLUSION AND SUMMARY OF ARGUMENT	9

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TO: Chief, Allocations Branch
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REPLY COMMENTS

KREI Inc. (hereafter KREI), by its attorneys, and pursuant to Section 1.405 of the Commission's rules, hereby replies to the several petitions for rule making and counterproposals listed in the Public Notice, Report No. 1978, released October 22, 1993 (Appendix A hereto) looking toward the allotment (or upgrade) of FM channels at Bismarck, Ironton and Centerville, Missouri and Herrin, Illinois. As demonstrated below, the public interest will be served by the allotment of Channel 258C3 at Bismarck and of any one of three Class A channels (Channels 260, 269 and 294) at Centerville.

I. INTRODUCTION

1. On July 8, 1993, KREI filed a Petition for Rule Making looking toward the allotment of Channel 258C3 at Farmington, Missouri (RM-8291). In response thereto, the Commission issued a

Notice of Proposed Rule Making, DA 93-921, released August 4, 1993, observing that Channel 258C3 can be allotted to Farmington in compliance with minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) southwest of the community. Interested parties were invited to file comments on or before September 24, 1993.

2. On August 19, 1993, Wayne E. Tate (hereafter Tate) filed a Petition for Rule Making looking toward the substitution of Channel 224B1 for Channel 224A at Herrin, Illinois, and the substitution of Channel 258C3 for Channel 224A at Ironton, Missouri (RM-8325).

3. On September 24, 1993, Tate and David E. Smith Communications, Inc. (hereafter Smith) filed Comments and Counterproposal reiterating the proposed substitutions of Channel 224B1 for Channel 224A at Herrin and Channel 258C3 for Channel 224A at Ironton, as well as proposing the addition of Channel 224A at Centerville, Missouri (RM-8360).

4. On September 24, 1993, MKS Broadcasting, Inc., filed Comments in support of the proposed Channel 258C3 allotment at Farmington. Finally, on September 24, 1993, KREI filed Comments and Counterproposal looking toward the allotment of Channel 258C3 at Bismarck, Missouri (RM-8358).

5. In its Public Notice, supra, the Commission advised that the proposed new allotments at Bismarck and Centerville and the proposed upgrades at Ironton and Herrin would be treated as counterproposals in this proceeding and invited interested parties

to file Reply Comments on or before November 8, 1993 (Appendix A hereto).

II. THE PROPOSALS

6. **Centerville.** Smith is the licensee of FM broadcast Station KYLS which is authorized to operate on Channel 224A at Ironton.^{1/} Tate and Smith propose the substitution of Channel 258C3 for Channel 224A at Ironton and the allotment of Channel 224A at Centerville.

7. Centerville is located approximately 20 miles southwest of Ironton and has a 1990 population of 200 persons. It is an incorporated community and the county seat of Reynolds County (1990 population - 6,661). The allotment of Channel 224A would provide Centerville with its first aural transmission service.

8. The Commission need not reallocate Channel 224A from Ironton to Centerville in order to provide Centerville with its first aural transmission service. As reflected in the annexed Engineering Statement of Sisk Engineering, Inc. (Appendix B hereto), three other Class A channels (Channels 260, 269 and 294) may be allotted at Centerville and, utilizing the Centerville city coordinates (as did Tate and Smith), comply with the minimum distance separation requirements of the Commission's rules.

9. **Herrin and Ironton.** Tate is the permittee of unbuilt station WVZA, which is currently authorized to operate on Channel

^{1/} KREI understands that KYLS is off-the-air.

224A at Herrin, Illinois. As noted, Smith is the licensee of KYLS, which is authorized to operate on Channel 224A at Ironton. Tate and Smith propose to upgrade their authorizations so that WVZA might operate on Channel 224B1 at Herrin and KYLS might operate on Channel 258C3 at Ironton. Ironton is approximately 18 miles southwest of Farmington and 12 miles south of Bismarck. The proposed Channel 258C3 allotments at Farmington, Bismarck and Ironton are mutually exclusive. Moreover, in the absence of the removal of Channel 224A from Ironton, the Channel 224B1 upgrade at Herrin and the Channel 224A allotment to Centerville may not be made.

10. **Bismarck.** KREI proposes the allotment of Channel 258C3 at Bismarck. Bismarck (1990 population - 1,579) is approximately 12 miles west of Farmington (1990 population - 11,598). Both communities are situated in St. Francois County (1990 population - 48,904). The allotment of Channel 258C3 at Bismarck would provide that community with its first aural transmission service.

III. SECTION 307(b) CONSIDERATIONS

11. Section 307(b) of the Communications Act of 1934, as amended (47 U.S.C. §307(b)) provides in pertinent part:

[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

To implement the statute, the Commission has established the following priorities in FM allotment proceedings (Revision of FM Assignment Policies and Procedures, 90 FCC2d 88, 51 RR2d 807, 810-11 (1982)):

- i. The provision of a first aural (reception) service;
- ii. The provision of a second aural (reception) or a first local aural (transmission) service; and
- iii. Other public interest factors.

12. Based upon the foregoing FM allotment priorities, the Commission should allot Channel 258C3 to Bismarck. Bismarck is an incorporated community with a population of 1,579 (1990 Census). Bismarck has a post office (zip 63624) and a Mayor - Council, form of government. The Mayor is a member of Council but is elected to that office by the public. Bismarck operates a police department and a volunteer fire department. The Bismarck School System serves 703 students, 376 in kindergarten through sixth grade and 327 in seventh through twelfth grade (see KREI September 24, 1993 Comments and Counterproposal, p. 2).

13. Bismarck has a City Administrator and a variety of businesses and professions which identify themselves with the Bismarck community, including a feed store, a grocery store, a ceramic shop, craft shops, an antique store, auto repairs and sales, a motel, a restaurant, a doctor and a dentist. The Union Pacific Railroad and a small manufacturing company, making sno-cone

(ice shaving) machines, are principal employers. Bismarck observed its 125th anniversary in July 1993 (Ibid., p. 3).

14. In summary, there can be no doubt but that Bismarck is a community of sufficient size and character to warrant the allotment of a first aural transmission service. Bismarck has a greater need for new service than does Farmington. Farmington is presently served by two commercial stations, KREI which operates on 800 kHz with power of 1 KW-D and KTJJ which operates on 98.5 mHz with effective radiated power (ERP) of 100 KW and height above-average terrain (HAAT) of 1,040 feet.^{2/} The provision of a first aural transmission service at Bismarck is superior to the allotment of a third aural service at Farmington and will, therefore, advance the objectives of Section 307(b) of the Communications Act of 1934, as amended, and the Commission's FM allotment policies.

15. As noted above, the Commission need not determine the relative need between Bismarck for a Channel 258C3 allotment and Centerville for a Channel 224A allotment. The reason is that there are three other Class A channels (Channel 260, 269 and 294) which may be allotted to Centerville. Even if such a comparison were made, there can be no doubt but that the provision of a first aural transmission service at Bismarck is comparatively superior to the allotment of a first aural transmission service at Centerville.

^{2/} The Bismarck C3 proposal will provide principal city service to Farmington (see Appendix C hereto).

16. Under the 1990 Census, Centerville has a population of only 200 persons (see Appendix D hereto).^{3/} This represents a significant decline in population from the 1980 Census (241 persons). Centerville is thus seven times smaller than Bismarck, and assuming it qualifies as a community for allotment purposes, is not entitled to a community preference under Section 307(b) of the Act. Ruarch Associates, 99 FCC2d 338 (1984) aff'd, 101 FCC2d 1358 (1985).

17. In Ruarch, the Review Board observed that "we have not been directed to a single case in which a community with a population of less than 1,000 has received a dispositive Section 307(b) preference in a multi-community Section 307(b) situation." 99 FCC2d at 341, 342 (footnote omitted). The Commission affirmed the Board, reiterating that "we have never found that a community as small as Edinburg [Virginia - 752 persons] is appreciable enough to take advantage of this presumption [the need of every community of appreciable size for at least one station for local self expression] in a multiple party proceeding." 101 FCC2d at 1360 (footnotes omitted).

^{3/} Centerville is situated in sparsely populated Reynolds County (population - 6,661) about half of which is comprised of the Mark Twain National Forest (Centerville is in the southeastern corner of the forest). Reynolds County is also the locale of Johnson's State Park, Logan Creek State Forest, Dicken's Alley State Forest, Clearwater State Forest, Riverside State Forest and Webb Creek State Forest. Two other communities are located in Reynolds County - - Lesterville (which is slightly larger than Centerville) and Ellington (population 994).

18. Finally, the Class C3 allotment at Bismarck is comparatively superior to the B1 and C3 Channel 224 upgrades at Herrin and Ironton. In their Comments and Counterproposal, Tate and Smith have not undertaken to show that the Ironton and Herrin upgrades would eliminate any white or grey area. The presence of FM Station KTJJ (100 KW ERP and 1040 feet HAAT) at Farmington eliminates any possibility of white area for the Ironton Class C3 proposal (Appendix E hereto). Moreover, the proposed site for the Bismarck Channel 258C3 operation is in close proximity (within five miles) of Ironton,^{4/} so that the area to be served by the Bismarck proposal coupled with the area served by the present WVZA Class A operation most likely eliminates any possibility of the provision of grey area by the Ironton C3 proposal (see Appendices C and F hereto).

19. A similar conclusion is most likely to obtain in connection with the Herrin B1 upgrade. There, Tate proposes to operate with B1 facilities with a site restriction of 18.75 kilometers west-southwest of Herrin. This would place the proposed B1 operation in the immediate vicinity of Murphysboro and Carbondale, Illinois, which between them have four commercial radio stations, including WCIL-FM (50 KW ERP and 430 feet HAAT) and WTAO(FM) (25 KW ERP and 308 feet HAAT). In addition to Tate's presently authorized (BPH-890405ME) and proposed Class A facilities

^{4/} The Bismarck C3 proposal will provide principal city service to Ironton (see Appendix C hereto).

(BMPH-930804IB) (Appendix G hereto), other nearby FM facilities include WDDD-FM (50 KW ERP, 500 feet HAAT) Marion, WDQN-FM (3 KW ERP, 320 feet HAAT) DuQuoin and WFRX-FM (3 KW ERP, 205 feet HAAT) West Frankfort, Illinois (see Appendix H hereto).

IV. CONCLUSION AND SUMMARY OF ARGUMENT

20. The Commission should allot Channel 258C3 to Bismarck as that community's first aural transmission service. The Commission may also allot any one of three Class A channels (Channels 260, 269 and 294) to Centerville as that community's first aural transmission service. The Commission should deny the C3 upgrade at Ironton and the B1 upgrade at Herrin. Neither upgrade will apparently provide service to a white or grey area, and for this reason, the provision of a first aural transmission service at Bismarck is comparatively superior under Section 307(b) of the Communications Act.

Respectfully submitted,

KREI INC.

By:


John E. Fiorini III
James K. Edmundson

GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7159

DATED: November 8, 1993
[65059]

APPENDIX A



PUBLIC NOTICE

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

40274

REPORT NO. 1978

October 22, 1993

ASSOCIATE MANAGING DIRECTOR
PUBLIC INFORMATION AND REFERENCE SERVICES
PETITIONS FOR RULEMAKING FILED

(Interested persons may file statements opposing or supporting the Petitions for Rulemaking listed herein within 30 days. See Section 1.4 and 1.405 of the Commission's rules for further information)

RM No.	Rules Sec.	Petitioner	Date Rec'd	Nature of Petition
8325*	73.202(b)	Wayne E. Tate (Filed by David D. Oxenford, Attorney Fisher, Wayland, Cooper and Leader 1255 23rd Street, NW Suite 800 Washington, DC 20037)	08/19/93	Request Amendment of FM Table of Allotments to substitute Channel 224B1 for Channel 224A at Herrin, IL at coordinates 37-45-00 and 89-14-45; sub- stitute Channel 258A for Channel 224A at Ironton, MO at coordinates 37-34-23 and 90-41-35.

1575

RM No.	Rules Sec.	Petitioner	Date Rec'd	Nature of Petition
8358*	73.202(b)	KREI Inc. (Filed by John E. Fiorini III and James K. Edmundson, Attorneys Gardner, Carton & Douglas 1301 K Street, NW Suite 900, East Tower Washington, DC 20005)	09/24/93	Request Amendment of FM Table of Allotments to add Channel 258C3 to Bismarck, MO at coordinates 37-38-43 and 90-32-54.
8360*	73.202(b)	Wayne E. Tate and David E. Smith Communications, Inc. (Filed by David D. Oxenford, Attorney Fisher, Wayland, Cooper & Leader 1255 23rd Street, N.W. Suite 800 Washington, S.C. 20037 David E. Smith, President David E. Smith Communications, Inc. KFTW Radio Box 71, Highway 00 Fredericktown, Mo 63645)	09/24/93	Request Amendment of FM Table of Allotments to substitute Channel 224B1 for Channel 224A at Herrin, IL at coordinates 37-45-00 and 89-14-45; substitute Channel 258C3 for Channel 224A at Ironton, MO at coordinates 37-34-23 and 90-41-35; add Channel 224A to Centerville, MO at coordinates 37-26-06 and 90-57-36.

*THE ABOVE PETITIONS FOR RULEMAKING WILL BE TREATED AS COUNTERPROPOSALS IN MM DOCKET NO. 93-224. REPLY COMMENTS TO THESE COUNTERPROPOSALS SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE. COMPETING EXPRESSIONS OF INTEREST IN THE USE OF CHANNEL 258C3 AT IRONTON, MISSOURI, SHOULD BE FILED BY THE SAME DATE.

APPENDIX B

Sisk Engineering, Inc.


ENGINEERING STATEMENT
FOR
KREI, INC.
FARMINGTON, MISSOURI

We were requested by KREI, Inc., Farmington, Missouri, to determine if there was another frequency available that could be utilized as a Class A station in the community of Centerville, Missouri. We conducted the search and found that there indeed was a channel that could be utilized at the same site coordinates proposed in the Comments and Counterproposal of Wayne E. Tate and David E. Smith Communications, Inc.

Our study indicated that in fact there are three (3) channels that could be utilized as Class A's in Centerville. Channel 260 could be utilized at their proposed coordinates and Channel 269 and 294 could also be utilized.

Three printouts attached to this reply verify that these three channels can be utilized at Centerville, Missouri.

This engineering statement has been prepared by Olvie E. Sisk, whose education and experience are a matter of record with the Federal Communications Commission. Should any question arise concerning this statement, please call me.


Olvie E. Sisk

Date: October 11, 1993

Sisk Engineering, Inc.

SISK ENGINEERING
P.O. Box 549 - Fulton MS - 601 862-2233

KREI INC.

REFERENCE	CLASS A	DISPLAY DATES
37 26 00 N		DATA 08-25-93
90 58 00 W	Current rules spacings	SEARCH 10-11-93
----- CHANNEL 260 - 99.9 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KDJR	261A	De Soto	MO	28.3	74.38	72.0	2.38
AD258	258C3	Farmington	MO	58.1	44.69	42.0	2.69
KZYQFM	259C3	St. James	MO	319.0	93.74	89.0	4.74
WOOZFM	260B	Harrisburg	IL	83.9	186.63	178.0	8.63
KFAV.C	260C3	Warrenton	MO	357.5	156.16	142.0	14.16
AD263	263A	Leasburg	MO	329.7	66.60	31.0	35.60
KGAR	262C2	Willow Springs	MO	246.4	102.68	55.0	47.68
KUNQ.C	257C2	Houston	MO	247.8	103.05	55.0	48.05

Sisk Engineering, Inc.

SISK ENGINEERING
P.O. Box 549 - Fulton MS - 601 862-2233

KREI INC.

REFERENCE	CLASS A	DISPLAY DATES
37 26 00 N		DATA 08-25-93
90 58 00 W	Current rules spacings	SEARCH 10-11-93
----- CHANNEL 269 -101.7 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KJBR	270C	Jonesboro	AR	171.6	165.96	165.0	0.96
KLPW	269A	Union	MO	356.7	116.65	115.0	1.65
AD270	270C1	Eldon	MO	298.5	147.14	133.0	14.14
WCILFM	268B	Carbondale	IL	77.9	154.46	113.0	41.46
DE271	271A	Cuba	MO	331.2	79.98	31.0	48.98
KXIY.C	271A	Cuba	MO	330.8	80.14	31.0	49.14

Sisk Engineering, Inc.

SISK ENGINEERING
P.O. Box 549 - Fulton MS - 601 862-2233

KREI INC.

REFERENCE	CLASS A	DISPLAY DATES
37 26 00 N		DATA 08-25-93
90 58 00 W	Current rules spacings	SEARCH 10-11-93
----- CHANNEL 294 -106.7 MHz -----		

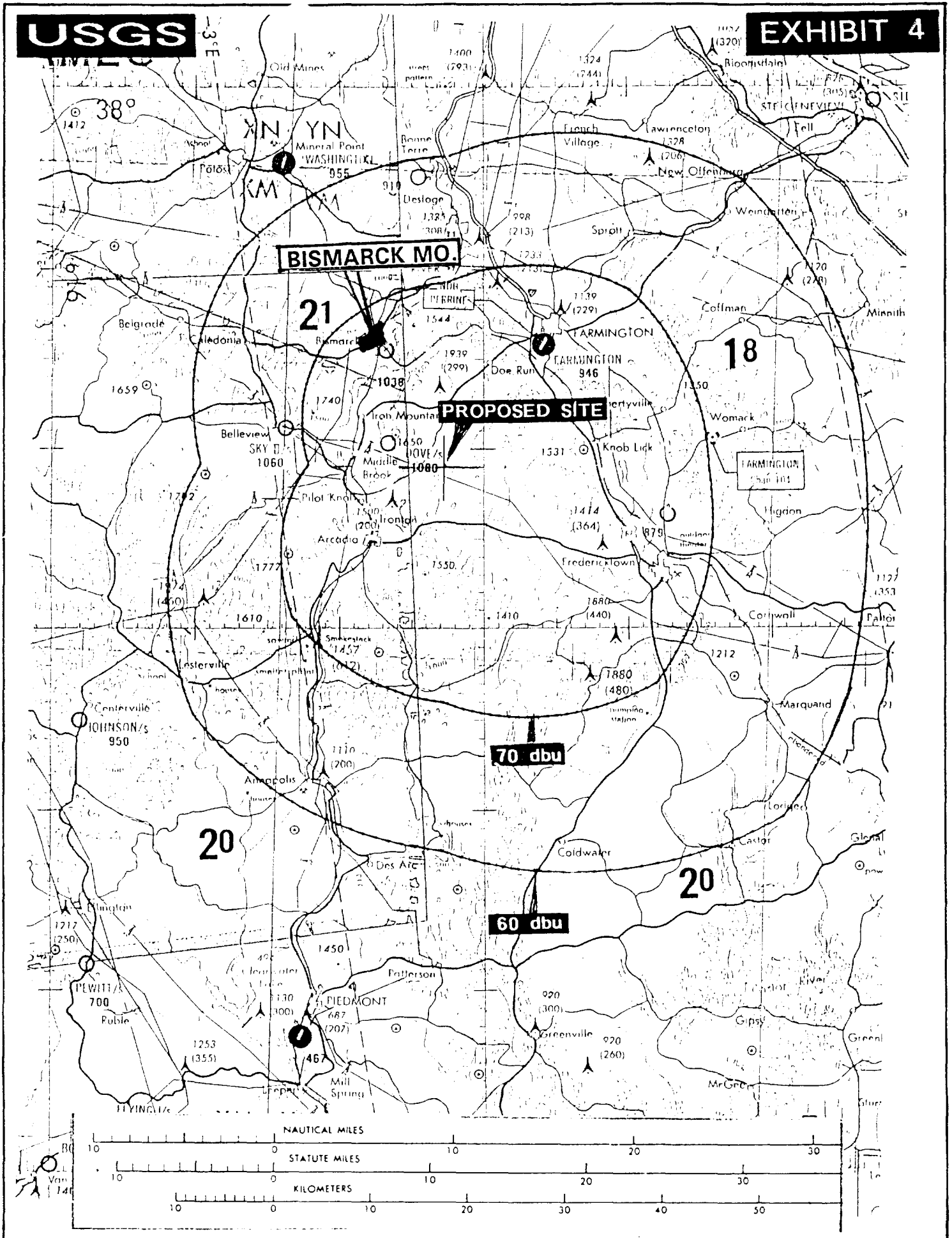
CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WKBB	293C1	Granite City	IL	24.0	138.52	133.0	5.52
AD295	295A	Perryville	MO	74.3	93.56	72.0	21.56
KKFA	295C	Jefferson City	MO	314.9	189.27	165.0	24.27
KBMVFM	296C3	Birch Tree	MO	232.4	73.79	42.0	31.79
AD297	297C3	Cuba	MO	330.8	80.14	42.0	38.14
KBMVFM	296A	Birch Tree	MO	226.1	71.68	31.0	40.68
KBMVFM	296A	Birch Tree	MO	226.1	71.68	31.0	40.68
KBMVFM	296A	Birch Tree	MO	226.1	71.76	31.0	40.76
KMMC	240A	Salem	MO	293.9	54.91	10.0	44.91
KCMGFM	293A	Mountain Grove	MO	253.8	118.49	72.0	46.49
AD297	297A	Cuba	MO	330.8	80.14	31.0	49.14

APPENDIX C

[Excerpt from Engineering Statement of Sisk Engineering, Inc., filed with KREI's September 24, 1993 Comments and Counterproposal.]

USGS

EXHIBIT 4



APPENDIX D



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

December 5, 1991

From the Director
Bureau of the Census

This is an official statement of the revised 1990 census population and housing unit counts for Centerville city, Missouri, including corrections made through November 21, 1991.

According to the official returns of the TWENTY-FIRST DECENNIAL CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the counts as of April 1, 1990 for Centerville city, Missouri are:

Population	200
Housing Units ...	101

Barbara Everitt Bryant

Barbara Everitt Bryant

This statement is being sent to the highest elected official of this governmental unit, the Secretary of State, and other state officials.

Census counts used for Congressional apportionment and legislative redistricting and 1990 census data products will remain unchanged. The Census Bureau will show the corrections in a supplemental user note.

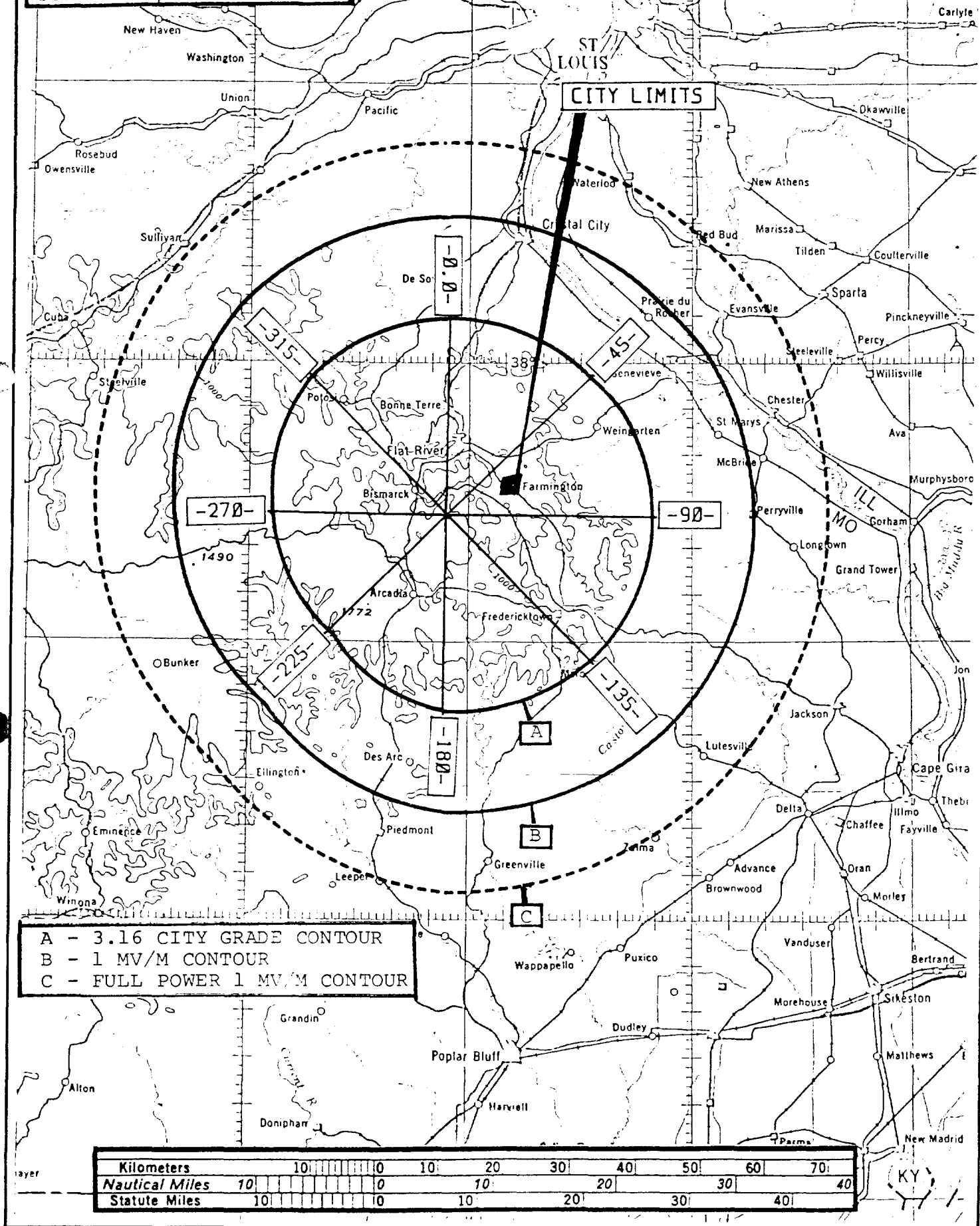
If you require additional information, please call the Census Bureau on (301) 763-4894. Please refer to document number 29100777-29-000-000-0755-0000-01.

APPENDIX E

KTJS

WORLD AERONAUTICAL CHART
Scale 1:1,000,000

EXHIBIT E#3



A - 3.16 CITY GRADE CONTOUR
B - 1 MV/M CONTOUR
C - FULL POWER 1 MV/M CONTOUR